

HOWARD COUNTY ETHICS COMMISSION
3430 Courthouse Drive
Ellicott City, Maryland 21043

December 16, 2021

ADVISORY OPINION NO. 2021-04

The Howard County Ethics Commission (“Ethics Commission”) has received a request for an Advisory Opinion in which the Requestor has inquired about whether a contribution to a candidate who has filed to use the Citizens’ Election Fund by a member of the Howard County Citizens’ Election Fund Commission would be a conflict of interest under the Howard County Public Ethics Law, Howard County Code Section 22.200 et seq. (the “Ethics Law”). For the reasons set forth herein, the Ethics Commission has determined that a direct donation to a participating candidate by a Citizens’ Election Fund Commission member, while serving on the Citizens’ Election Fund Commission, creates a conflict of interest or a perception of a conflict. However, Citizens’ Election Fund Commission members may donate directly to the Citizens’ Election Fund to show their support for the program, which will ultimately support the candidates participating in the fund.

I. BACKGROUND

A. The Citizens Election Fund

In April 2013, the Maryland General Assembly passed the Campaign Reform Act, which authorized Maryland counties to establish a campaign finance system for County Executive and County Council races. On April 5, 2016, the Howard County Council passed a resolution to amend the County Charter to establish a Citizens’ Election Fund. The proposed Charter amendment was placed on the ballot and on November 4, 2016, Howard County residents voted to adopt the amendment. Thereafter, on June 5, 2017, the Howard County Council passed a bill to create a public finance system for candidates. On July 3, 2017, the Citizens’ Election Fund (“CEF”) and the Citizens’ Election Fund Commission (“CEF Commission”) were established. *See* Howard County Code, Title 10, Subtitle 3.

The CEF provides public campaign financing to Howard County candidates for County Executive and County Council who agree to participate in the program and abide by the enumerated requirements. Specifically, a candidate participating in the CEF may only accept contributions from individuals in an amount not to exceed \$250.00. If the candidate receives the required number of qualified contributions, such candidate will receive matching funds from the CEF.

See <https://www.howardcountymd.gov/finance/resource/citizens-election-fund-faq>.

B. The Citizens Election Fund Commission

The CEF Commission consists of seven (7) members. Two members are nominated by the County Executive and the remaining five (5) members are each nominated by a County Council member. Nominees are then confirmed by the County Council. The CEF Commission is tasked

with overseeing the CEF for Howard County. *See* Howard County Code §10.310. As part of this, the CEF Commission must calculate the total amount of funds required to fully support the CEF, including the estimated amount for the full election cycle and the amount to be included in the County's current expense budget for the ensuing fiscal year to fully fund the CEF. *See* County Charter Section 907. If the County Executive does not include the amount calculated by the CEF Commission, the County Council may amend the annual budget and appropriation ordinance to include the amount calculated by the CEF Commission. *See Id.* Further, the CEF Commission must consider and decide any alleged violations of the CEF law.

C. Request for Advisory Opinion

The Requestor serves on the CEF Commission. She has requested this Advisory Opinion for both her own personal guidance and for the entire CEF Commission.

II. THE ETHICS LAW

Sec. 22.201. - Statement of purpose and policy.

- (a) Howard County, recognizing that our system of representative government is dependent in part upon the people maintaining the highest trust in their public officials and employees, finds and declares that the people have a right to be assured that the impartiality and independent judgment of public officials and employees will be maintained.

...

- (b) For the purpose of guarding against improper influence, the County Council enacts this Public Ethics Law to require County elected officials, officials, employees, and individuals appointed to Boards and Commissions to disclose their financial affairs and to set minimum standards for the conduct of local government business.

Sec. 22.202(n) – Definitions.

- (n) *Official* means an elected official, an employee of the County, or a person appointed to or employed by the County or any County agency, board, commission, or similar entity:
 - (1) Whether or not paid in whole or in part with County funds; and
 - (2) Whether or not compensated.

Sec. 22.204. - Prohibited conduct and interests.

- (e) *Use of Prestige of Office.*
 - (1) An official or employee may not intentionally use the prestige of office or public position for the private gain of that official or employee or the private gain of another.
 - (2) This subsection does not prohibit the performance of usual and customary constituent services by an elected official without additional compensation.

III. ISSUE

Would a direct donation to a candidate participating in the CEF by an active CEF Commission member present a conflict or an appearance of a conflict under the Ethics Law?

IV. DISCUSSION

A. *Purpose of the Ethics Law*

The Ethics Law is established to ensure that the public may maintain “the highest trust in their public officials and employees” and “be assured that the impartiality and independent judgment of public officials and employees will be maintained.” County Code §22.201(a). The Ethics Law requires an “elected official, an employee of the County, or a person appointed to or employed by the County or any County agency, board, commission, or similar entity” to abide by “minimum standards for the conduct of local government business.” County Code §§22.202(n) & 22.201(b).

The Ethics Commission is charged with ensuring that the public is protected from improper influence as it relates to public business and that public officials refrain from actions that arise to a conflict of interest, or the appearance of a conflict of interest. Officials must refrain from activities which impair their impartiality or independence of judgment. A member of a County commission, such as the CEF Commission, is an “official” pursuant to the Ethics Law.

B. *Prohibited Conduct - Appearance of Conflict/Use of Prestige of Office*

Under prior decisions of the Ethics Commission, we will consider an appearance of conflict as a use of prestige of office prohibited under the Ethics Law. *See* Section 22.204(e). *See also* Op. Nos. 2012-05; 2011-01; 2007-05; 2004-02. “An official or employee may not intentionally

use the prestige of office or public position for the private gain of that official or employee or the private gain of another.” County Code §22.204(e). The Ethics Commission has determined that the term “private gain”, as used in Section 22.204(e), applies solely to economic or contractual gain. *See* Op. No. 2011-01. A direct donation to a participating candidate would amount to “private gain of another.”

The Ethics Law is formulated to protect against actual bias, improper influence, prejudice or favoritism, or an appearance of these conditions. If a CEF Commission member donated to a specific candidate participating in the CEF, this would give rise to a conflict or perception of a conflict to other candidates and the general public. Such conflicts or appearance of conflicts would, undermine the integrity of the CEF Commission and the CEF laws and processes.

For example, if a complaint for a violation of the CEF law was filed against either (1) a participating candidate who received a contribution from a CEF Commission member, or (2) an opposing participating candidate, such complaint would be subject to the authority of the CEF Commission. A CEF Commission member who donates to a specific campaign would not be able to participate in any matter related to such participating candidate or any issues raised in such candidate’s race. Should numerous CEF Commission members decide to donate to participating candidate(s), it could cause some or all CEF Commission members to be able to fulfill their duties to carry out the CEF laws.

The Ethics Commission considered whether such conflict could be eliminated or cured by recusal or non-participation in matters relating to the specific candidate. The majority of the Ethics Commission determined that the conflict cannot be cured by recusal or non-participation because it does not cure the likely perception by the public that a CEF Commission member who donates directly to a participating candidate may have impaired impartiality or lack independence of judgment. Further, as explained herein, the potential for multiple CEF Commission members being required to recuse themselves could impair the ability of the CEF Commission to oversee the CEF as required by County Code.

V. CONCLUSION

The Commission appreciates the Requestor's dedication to the community and her willingness to volunteer on the CEF Commission. For the reasons outlined herein, the Ethics Commission finds that a direct donation to a participating candidate by a CEF Commission member, while serving on the CEF Commission, creates a conflict of interest or a perception of a conflict. CEF Commission members may donate directly to the CEF to show their support for the program, which will ultimately support the candidates participating in the fund.

HOWARD COUNTY ETHICS COMMISSION

By: 

Kristen Bowen Perry, Executive Secretary
on behalf of the Howard County Ethics
Commission

Charles Fuller, Chairperson
Joanne Drielak, Vice Chairperson
Jonathan Kromm*
Joseph Markwordt
Jean Xu*

*Jean Xu was not present at the meeting discussing this Advisory Opinion and did not participate in the decision.

*Jonathan Kromm did not concur in this decision.